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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,749	03/29/2004	Robert J. Simmons	J-BSIM.1013	5475
56703 7590 09/19/2008 ROBERT D. VARITZ, P.C. 4915 SE 33RD PLACE PORTLAND, OR 97202				
EXAMINER				
FOX, CHARLES A				
ART UNIT		PAPER NUMBER		
3652				
MAIL DATE		DELIVERY MODE		
09/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,749

Applicant(s)

SIMMONS, ROBERT J.

Examiner

Charles A. Fox

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7 and 8 is/are rejected.
- 7) ☒ Claim(s) 5 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 has limitations where the deck is supported by "a pair of upright supports". This is not accurate as each horizontal deck beam is supported by a pair of upright supports. Clarification is required. In any art rejections below the claim is treated as using the word comprising in place of consisting, and each horizontal beam is treated as having a pair of supports.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calletti et al. in view of Vandelinde. Calletti et al. US 3,379,281 teaches a work platform for handling steel building beam comprising:

a work platform with an open cage structure;

said platform having a substantially horizontal deck (44) surrounded by a substantially upstanding partial wall structure;

a set of fork receivers(54) for access by a lifting machine;

an upper deck structure (28,30) for holding a plurality of elongate beams;

said upper deck structure having an upper portion on the fork receiving side of the device and an open end opposite thereto. Calletti et al. does not teach the second deck as being above the wall structures. Vandelinde US 4,749,060 teaches a work platform comprising:

a deck structure (22,51) for creating a platform for workers;

a plurality of substantially vertical walls upstanding from said deck;

a pair of horizontal supports (100) spaced over head of said deck and walls;

said supports being each supported by a pair of uprights (102). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Calletti et al. with an overhead support as taught by Vandelinde in order to maintain a separation between workers on the platform and the material being moved, thereby decreasing the risk of crushing a worker.

Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calletti et al. and Vandelinde as applied to claims 1 and 7 above, and further in view of Crocker et al. Regarding claims 2 and 8 Calletti et al. and Vandelinde teach the limitations of claims 1 and 7 as above, they do not teach a pivotal bridge extension to the upper deck structure. Crocker et al. teach a device for handling elongate objects comprising:

two horizontally arranged surfaces(20) for moving the object along;

each surface having a pivotal element that keeps the object from moving past an end of said surface when in a substantially vertical position and form a bridge to a

second horizontal surface when in a substantially horizontal position. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Calletti et al. with a pivotal member as taught by Crocker et al. in order to keep the elongate members secure on the deck during transport and to extend the reach of said deck during unloading of the device.

Response to Amendment

This action is based upon claims filed on June 24, 2008.

Allowable Subject Matter

Claims 5 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art of Calletti and Crocker does not teach or suggest a cross member on the pivotal bridge sections of the upper deck.

Response to Arguments

Applicant's arguments filed June 24, 2008 have been fully considered but they are not persuasive. Regarding the 112 rejection of claim 1 dealing with the supports for the overhead deck, the applicant argues that the claim states that each deck structure element is supported by a pair of upright supports. This is not the case as the claim states "a pair of spaced apart deck structure elements which are supported by a pair of spaced apart upright supports". Since applicant does not explicitly claim each element has a pair of supports, but rather the overall structure has a pair of supports the

rejection is valid and hereby made final. All other 112 rejections have been addressed and they have been withdrawn based on the provided claim amendments.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., location of structural elements) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Thus claims 1 and 7 are hereby finally rejected.

Regarding the bridging element taught by Crocker et al. the citation of element 44 was a typographical error that has been corrected. It is clear from the drawings that the bridging element is taught by Crocker et al. and that the bridging element works exactly as the one claimed in the instant application.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached on 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Fox/
Primary Examiner, Art Unit 3652